IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.2459 OF 2005

Ajit Shamgonda Patil ..Petitioner

Vs.

Usuf Karim Jamadar deceased
by legal heirs and Ors. ..Respondents

...

Mr.N.J.Patil for Petitioner

...

**CORAM : B.H.MARLAPALLE,J.**

**DATE : APRIL 21,2005**

**P.C.:**

1. Heard Mr.Patil, the learned counsel for the Petitioner who is aggrieved by the order dated 1.4.2005 passed by the learned Civil Judge J.D. Peth-wadgaon by which the application at Exh.56 filed in R.D.No. 11 of 1983 has been rejected. Mr.Patil also states that application at Exh.85 taking objection for adjudication of his rights as cultivator is still pending for decision. He has also placed on record copy of the order passed by this Court on 5.10.2004 in W.P.No. 662 of 1996.

2. Though the order impugned, does not call for any interference and the proposed partition for execution of the decree cannot be stalled, certain

clarifications regarding the petitioner's rights will have to be kept in mind as the Petitioner apprehends that as soon as the partition is ordered, he may be evicted. The observations made by this Court in W.P.No. 662 of 1996 will govern the parties' rights including the Petitioner. Speaking on the petitioner's rights this Court noted in W.P.No. 662 of 1996 as under:

. "In so far as the right of the Petitioner is concerned, the law is now well settled that if the tenancy is created during the pendency of the suit, it is not open for such tenant at the time of passing of the final decree to raise the contention that he was a tenant of the suit land. This principle is settled by the Apex Court in 2003(1) All M.R.765 (S.C.) in Venkatrao Anantdeo Joshi and Ors. Vs. Sau.Maltibai and Ors. In the present case, admittedly, the petitioner was inducted as tenant in 1953-54 whereas suit was filed in 1949. Therefore, it was hit by doctrine of lis pendens".

3. Petition is therefore rejected summarily. However, this order of rejection will not come in the way of the Petitioner to initiate appropriate proceedings that may be permissible in law to protect his possession.

[ B.H.MARLAPALLE,J. ]